

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

STATE OF NEW YORK, et al,

Plaintiffs,

V.

UNITED STATES DEPARTMENT
OF COMMERCE, et al,

Defendants.

No. 1:18-CV-2921 (JMF)

DECLARATION

I, JAMES UTHMEIER, make the following Declaration under the penalty of perjury pursuant to 28 U.S.C. § 1746, and state that the following is true and correct to the best of my knowledge and belief:

1. I am currently Counsel in the Office of the Secretary and Special Advisor to the Secretary for Space. In August 2017 I served as Senior Counsel to the General Counsel.

2. I recently relocated to a new physical work space at the Department of Commerce in June 2018.

3. On August 9, 2018, counsel asked me to ensure that all materials I relied upon when briefing new senior leadership at the Department on September 5, 2017 have been collected and reviewed. I determined that the majority of the records I used were recorded in the original Administrative Record, including examples of Census forms (AR 2, AR 42, AR 48); the Census Bureau's "Why We Ask: Place of Birth, Citizenship, and Year of Entry" webpage (AR 523); a study on American Community Survey data (AR 284); and my previously prepared legal memo (AR 11342), which is included in Defendants' privilege log.

4. Although the majority of materials used during this meeting were produced, I located five additional paper documents in my office, binder-clipped together, which I failed to identify during my previous search for documents in conjunction with the supplement to the Administrative Record, ordered by the Court on July 3, 2018.

5. These materials are all publicly available and were inadvertently omitted from the initial productions and privilege log.

6. The five documents are as follows:

- a. Google Scholar printout of *League of United Latin American Citizens, et al. v. Perry, Governor of Texas, et al.*, 548 U.S. 399 (2006), numbering 21 double-sided pages. This document is publicly available.
 - b. Slip Opinion printout of the syllabus in *League of United Latin American Citizens, et al. v. Perry, Governor of Texas, et al.*, 548 U.S. 399 (2006), numbering 9 single-sided pages. This document is publicly available.
 - c. A printout of "Title 13-Census" from the United States Code, numbering 18 double-sided pages. This document is publicly available.
 - d. A printout of "American Community Survey: Key Facts" from the Census Bureau's website, numbering 3 double-sided pages and available at https://www.census.gov/content/dam/Census/programs-surveys/acs/news/10ACS_keyfacts.pdf. This document is publicly available.
 - e. A printout of two non-consecutive pages (pp. iii and 11) from "Subjects Planned for the 2020 Census and American Community Survey: Federal Legislative and Program Uses (Issued March 2017, Revised)," available at <https://www2.census.gov/library/publications/decennial/2020/operations/planned-subjects-2020-acs.pdf>. This document is publicly available and produced without markings in the record at AR 194.
7. I used these five documents to convey and facilitate attorney-client privileged communications in the meeting indicated on September 5, 2017 in AR 1996. Each of these documents contains notations and highlights from me which indicate the substance of privileged communications along with my mental impressions in performing legal work for the Department.
 8. Due to the nature of these documents, they would not have been produced in any of the supplemental productions but would instead have been described in the privilege log. Their omission was entirely inadvertent and despite my best efforts to collect all material potentially responsive to the Court's July 3, 2018 order.
 9. A publicly available copy of each of these documents is included in the Exhibits with this declaration.
 10. I have thoroughly searched and re-searched my office for any responsive physical documents. Other than the documents previously produced, indicated on the privilege log, or identified above, I have no other responsive documents.



James Uthmeier

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